

OPINION NUMBER 87-4

DATE: May 29, 1987

SUBJECT: Local Regulation of the Practice of
Landscape Architecture

REQUESTED BY: Honorable Mayor and City Council

PREPARED BY: Frederick C. Conrad, Chief Deputy City
Attorney

QUESTION PRESENTED

Can The City of San Diego, by ordinance, prohibit the practice of landscape architecture by persons authorized by state law to engage in such practice?

CONCLUSION

The City of San Diego may not enact an ordinance which imposes limitations on the practice of landscape architecture by persons who are authorized by state law to engage in such practice because the state has preempted the field of professional licensing of the practice of landscape architecture to the exclusion of local regulations.

BACKGROUND

During discussions of proposed amendments to the City-wide Landscape Regulations (Municipal Code section 101.0700 et seq.) before the Transportation and Land Use Committee on May 11, 1987, a local landscape architect requested that the City adopt, by ordinance, provisions that would require that landscape plans submitted to the City be prepared by a registered landscape architect. Since the provisions of California Business and Professions Code sections 5641 through 5645 provide for exceptions and exemptions from the registration and licensing requirements for certain persons engaging in landscape architecture, the Transportation and Land Use Committee asked whether the City could limit the exceptions by not accepting landscape plans prepared by one who fell within the exception provided by Business and Professions Code section 5644 which provides:

. 5644. Holder of valid state license or authority; registration not required under this chapter

Any person who holds a valid state license or other such authority which authorizes the person to engage in a business or occupation, insofar as the person engages

in a professional occupational or business activity within the scope of that license or other authority, shall not be required to register under this chapter.

ANALYSIS

The practice of landscape architecture is regulated by the provisions of California Business and Professions Code, Article 3, Chapter 3.5 (sections 5641 through 5645), which provides exemptions from the licensing and registration requirements for certain persons. Of particular note is Business and Professions Code section 5644, cited above.

Those persons who qualify under the provisions of Article 3 of Chapter 3.5 are entitled and authorized by state law to practice landscape architecture subject to the limitations specified in Chapter 3.5. A local ordinance which provided that one must be registered as a landscape architect to do certain work when state law authorizes the performance of that work without such registration would be in conflict with state law which has preempted the field. As stated in *Verner, Hilby & Dunn v. City of Monte Seren*, 245 Cal.App.2d 28 (1966), at page 34:

The state, by various code sections has preempted the field of regulating and licensing persons entitled to engage in the occupations of civil engineering and land surveying. (Bus. & Prof. Code .. 6700-6799, 8700-8805.) Under such circumstances, a municipal ordinance which attempts to impose additional or more stringent requirements upon persons engaged in those occupations is in conflict with the general law and therefore invalid (*Agnew v. City of Culver City* (1959) 51 Cal.2d 474, 476-477, 334 P.2d 571; *Agnew v. City of Los Angeles* (1958) 51 Cal.2d 1, 5, 330 P.2d 385; *Agnew v. City of Culver City* (1956)

147 Cal.App.2d 144, 149-150, 304 P.2d 788; *Lynch v. City of Los Angeles* (1952) 114 Cal.App.2d 115, 118-120, 249 P.2d 856; *Agnew v. City of Los Angeles* (1952) 110 Cal.App.2d 612, 619-623, 243 P.2d 73), and this is true even if the requirements imposed by a city are identical to those contained in the state statute. (*Pipoly v. Benson* (1942) 20 Cal.2d 366, 370-372, 125 P.2d 482, 147 A.L.R. 515;

City & County of San Francisco v. Boss (1948)
83 Cal.App.2d 445, 452, 189 P.2d 32.)

The principal enumerated in Verner is equally applicable to the practice of landscape architecture.

Two opinions of the Attorney General of the State of California have addressed this subject and have come to the conclusion that local ordinances may not impose limitations on the practice of a profession when state law authorizes such practice.

In 46 Ops.Cal.Atty.Gen. 1 (1965), the Attorney General was asked:

May a city or county, by ordinance or regulation, prohibit architects licensed by this State from preparing or signing tentative maps or other maps for subdivisions by limiting the preparation and signing thereof to licensed land surveyors and registered engineers?

The Attorney General responded:

A licensed architect specifically exempted by section 6737 of the Business and Professions Code from the regulatory provisions of the Civil and Professional Engineers Act may prepare and sign tentative maps or other maps for subdivisions, insofar as such maps fall within the practice of architecture.

In 28 Ops.Cal.Atty.Gen. 297 (1956), the Attorney General was asked:

May a licensed architect prepare and sign plans and specifications provided for in section 93.0206(b) of the Los Angeles

Municipal Code, which prohibits the preparation and signing of such plans by anyone other than a registered electrical engineer?

The Attorney General responded:

A licensed architect specifically exempted by section 6737 of the Business and Professions Code from the regulatory provisions of the Civil and Professional Engineers Act may prepare and sign plans provided for in section 93.0206(b) of the Los Angeles Municipal Code, insofar as such plans fall within the practice of architecture.

In 55 Ops.Cal.Atty.Gen. 407 (1972), the Attorney General addressed questions relating to the practice of landscape architecture by architects and licensed contractors. The Attorney General was asked:

1. May a contractor, licensed pursuant to the Contractors License Law (Business and Professions Code section 7000 et seq.), act in the capacity of a landscape architect as that profession is defined in section 5615 of the Business and Professions Code?
2. May an architect, licensed by the California State Board of Architectural Examiners (Business and Professions Code section 5500 et seq.) practice the profession of landscape architecture as defined in section 5615 of the Business and Professions Code when such work is one phase of an entire project, but may not perform landscape architectural work when it is the full phase of a project?
3. May a professional engineer, licensed pursuant to the Professional Engineers Act (Business and Professions Code section 6700 et seq.), act in the capacity of a landscape architect as defined in section 5615 of the Business and Professions Code when this work is only one phase of a larger engineering project he has undertaken but not when his entire project is simply landscape architecture?

The Attorney general responded:

1. A contractor, licensed pursuant to the Contractors License Law (Business and Professions Code section 7000 et seq.), may act in the capacity of a landscape architect only as he practices within the bounds of a "landscaping contractor" as defined in Rule 747 of Title 16 (Chapter 8) of the California Administrative Code. Moreover, in connection with a landscaping project which he completes himself, he may design any system or facilities he considers necessary. However, he may not undertake to design a functional or aesthetic relationship between or among a

series of such systems or facilities where it is clear he is attempting to impose an architectural unity to a landscape.

2. An architect, licensed under the provisions of the Business and Professions Code pertaining to architects (section 5500 et seq.), may practice landscape architecture as one phase of a larger contract or as an entire project itself.

3. A professional engineer, licensed pursuant to the Professional Engineers Act (Business and Professions Code section 6700 et seq.), may perform landscape architecture as long as the work is incidental to his engineering project. However, since engineering is not primarily concerned with the aesthetic appearance of a project, an engineer cannot undertake a project where his engineering is only secondary to his creation of an aesthetically pleasing landscape.

While this opinion does not concern local regulation, it does address the subject of interdisciplinary practice of landscape architecture. It is interesting to note the results that would flow from rejecting the provisions of Business and Professions Code section 5644. Without this section, an architect would not be permitted to engage in the practice of landscape architecture (ignoring for the moment 55 Ops.Cal.Atty.Gen. 407, supra), but a landscape architect would be permitted to practice architecture, without being registered as an architect, pursuant to Business

and Professions Code section 5537.6 which provides the following exemption from registration as an architect:

. 5537.6. Exemptions; landscape architect

A landscape architect registered under the provisions of Chapter 3.5 (commencing with Section 5615), insofar as he or she practices the profession for which he or she is registered, is exempt from the provisions of this chapter, except that a landscape architect may not use the title "architect," exclusive of the word "landscape," unless he or she holds a license as required in this chapter.

Based on an analysis of applicable statutes, case law and the opinions of the Attorney general, it is clear that a local

ordinance is invalid that imposes limitations on the practice of landscape architecture that are inconsistent with the provisions of state law. Phrased differently, the City may not require one to be registered as a landscape architect as a prerequisite to practicing landscape architecture where state law has provided that one holding another license is authorized to engage in such practice. Furthermore, such an ordinance is invalid even if its provisions are identical to state law. (*Pipoly v. Benson*, supra; *City and County of San Francisco v. Boss*, supra.)

The City is obligated to accept landscape plans prepared by one authorized by state law to prepare such plans. Any changes to the list of exceptions and exemptions must come from the legislature. The City's obligation relates to the qualifications of the person preparing the plans, not to the plans themselves. The required content of such plans is subject to local regulation through the enactment of ordinances.

Respectfully submitted,
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APPROVED:

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